



CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.  
916 Anacapa Street, Santa Barbara, CA 93101  
phone 805-966-3979 fax 805-966-3970  
<http://www.citizensplanning.org> info@citizensplanning.org

## **Comments on DWR's Draft State Water Project Delivery Reliability Report**

By: Carolee Krieger  
Co-Chair, Citizens Planning Association's Water Committee  
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The primary task of The State Water Project (SWP) Delivery Reliability Report (The Report) is to give land-use planners and the public, through the SWP contractors, an accurate idea of how much water will be available from the SWP for building homes, sustaining agriculture and supporting businesses. The draft Reliability Report dated August 2002, by the State Department of Water Resources (DWR), is misleading and contradictory. It needs to be revised.

### **-The Report contains inaccurate numbers for purposes of planning development-**

If, as the foreword to the Report states, DWR is trying "to assist the contractors of the SWP in assessment of the adequacy of the SWP component of their overall water supply," then it is imperative the contractors, planners and the public, who will be using this Report as a definitive document, be given a clear and accurate set of figures and percentage reliability in Table A. Long range plans, such as the state mandated Urban Water Management Plans, require accurate information in order to know if water will be there for new housing subdivisions and businesses.

### **-Examples of how this report contains flawed assumptions and conclusions-**

#### **Mature Entitlements:**

Katherine Kelly, Chief of the State Water Project Planning Department, stated at the Public Hearing in Santa Barbara, that the Report establishes that "all entitlements matured in the 1990's." We believe this is not true. We believe that the vast majority, about 95% or more, of entitlement amounts "matured" (when they were brought on line by DWR) in the early 1980's. DWR Bulletin 132's for the 1980's and 1990's substantiate this. While Ms. Kelly is technically correct because the Santa Barbara/San Luis Obispo entitlements did not "mature" until 1997, these entitlements represent less than 3% of the total entitlements for the State Water Project. For Ms. Kelly to make the

statement that she did, misleads the planners and the public in understanding the information in the Report.

### **Reliability and Delivery:**

As Barbara McDonnell, DWR Division Chief, acknowledged at a meeting on September 8<sup>th</sup> 2002 in Sacramento to discuss this Report, 50% reliability should be used for planning new housing developments. 50% of 4.1 million acre feet (MAF) is approximately 2 MAF of water a year for the entire SWP. This is higher than the average of the actual water delivered by the SWP in the most recent 11 years. From 1991, the worst year of the last extended drought, to 2001, the average annual actual delivery from the SWP was 1.86 MAF.

75% of the SWP water is currently for urban use; 25% goes to agriculture. Urban users require a much higher standard of accuracy for water availability. Page 17 of the Report says "higher SWP reliability will be desired for permanent crops like orchards and vineyards." What about "permanent crops" like houses? People and homes can not be "fallowed" for a year or two and go without water the way crops can. It may happen that in the next 2 years a new set of Monterey Amendments to the SWP will be finalized. If they reflect the original intent of the 1996 Monterey Amendments, there will be no formal distinction between urban/industrial water and agricultural water. This will make accurate reliability forecasts even more critical for long range planning for development.

### **Historic Deliveries**

The deduction on page 16 of this Report is seminal and misleading when compared to actual historical deliveries over the past 20 years or even the most recent 11 years of 1991-2001. The Report states that, based on the simulations and modeling, 66% of the 4.13 MAF (2.70MAF) will be available 75% of the time and 83% of the 4.13 MAF (3.40 MAF) will be available 50% of the time. The average annual Table A deliveries from 1991-2002 is 1,856,909 AF a year (or 1.86 MAF a year). The actual 1.86 MAF is much less than even 50% of the Table A 4.23 MAF (2.1 MAF=50%) "minimum project yield" (pre Monterey SWP contracts) or even the post Monterey Amendment "maximum project yield" of 4.173 MAF (2.0 MAF=50%) [p.C-1 Appendix C]. This would confuse and mislead even the most diligent planner or citizen.

Appendix D gives the actual SWP historical deliveries. We have been assured by Katherine Kelly, DWR Chief, Office of SWP Planning, that the 1991 actual delivery figures will be included in the final SWP Reliability Report in this appendix.

To say that "past deliveries cannot accurately predict future deliveries (p.6)" is misleading. When planning for urban/industrial development, reliability must be considered for the long range life of housing projects and businesses and should be conservatively calculated. Actual deliveries from the recent past, 1991-2001, are a good gauge of what the SWP can do. The SWP has been approximately 96% complete since the early 1980's. Certainly from 1991 to the present, the full 4.23 MAF Table A amount should be taken as the baseline demand. Based on what the SWP has actually delivered



from 1991-2001 (1.86 MAF), even using 50% reliability (2.0 MAF) for housing developments and businesses, delivery forecasts may not be conservative or safe enough.

For simulations to be credible, it is our understanding that the assumptions used must be able to have the model reflect an accurate historical record of actual deliveries. This Report does not do this. Page 10 of the Report suggests this will be attempted in the future; but in the meantime, the present Report is fatally flawed by this lack. The simulations in Table B-3 through B-5 in the appendix reflect almost twice the amount of water than what was actually delivered in the recent worst drought year or 1991. This is very misleading and reflects the inaccuracy of the simulations used for this Report.

Simulations must be subject to peer review to be credible. I do not believe this has been done in this case; peer review is essential to make the Report credible.

“Table A is used to define each contractors proportion of available water supply the Department will allocate and deliver to the contractor.” (p. 5 paragraph 2, Level of Demand). Because Table A is just a proportional amount, not a definitive amount, the Table A total amount should reflect the amount of water available in the worst case (i.e. drought) scenario with the understanding that the actual deliveries would be ratcheted up proportionately based on what was actually available at the time of delivery. If Table A reflected the worst case scenario (i.e. 1991, .5MAF actually delivered), the “paper water” problem described in the *PCL v DWR* 3<sup>rd</sup> District Appeal Court decision would no longer exist. Planners would not be misled by contract amounts that could never be fulfilled and better planning for future urban development would occur.

Appendix C discusses SWP Table A and further states that “Table A is simply a tool for apportioning available supply and cost obligations under the contract.” (p.C-1). If Table A is “simply a tool”, then the total AF amount for Table A should not matter as long as the proportional division among the 29 contractors was accurate. The percentage component would still be there for allocating anything above the worst case situation. And planners, who might not fully understand all the nuances of this complex Report or the very long and complex contracts, would not be misled. In 1960 when the SWP was conceived, 4.23 MAF a year for the “minimum delivery” was a stab in the dark, a “wish and a prayer” according to the judges in the 3<sup>rd</sup> District Court of Appeal decision. We now know that the true “minimum yield” of the SWP is .5 MAF (1991 actual deliveries.)

Table 3, SWP Delta Average & Dry-Year Table A Deliveries (p.12) and Table B-2, SWP Delta Dry-Year Deliveries (p.B-2) are both very misleading. First, the figures in Table 3 and those for Table B-2 are identical. This is misleading because the Tables, by their titles, are supposed to reflect different weather conditions. Second, and more importantly, if a planner were to use these Tables, he or she would very likely conclude that the SWP was “on average 72%-75% reliable, even in the worst times. This flatly contradicts the conclusions on p. 16 and in Appendix B-3 which state, “that in 75% of the years, the annual delivery reliability is estimated to be at or above 66% of full Table A amounts or 2.73 MAF. Similarly, annual delivery reliability during 50% of the years is estimated to be at or above 83% of full Table A or 3.43 MAF” (p. B-3).

These numbers are confusing and do not even come close to reflecting what the SWP can and has actually delivered in the immediate past. **The average annual actual SWP delivery from 1991-2001 is 1.86 MAF.** So if planners and the public are actually counting on getting 3.43 MAF 50% of the time, they are out of luck and the homes and businesses will not have enough water. Stated another way, using the DWR 3.43 MAF number but changing it to 100% of the time, the new number for reliability is **1.72 MAF and is available 100% of the time** (increase their 50% to 100% and divide 3.43 in half to correspond to come to 1.72) would be more conservatively accurate.)

### **The Metropolitan Water District Entitlement**

There is another major flaw with the numbers in this Report. The Metropolitan Water District (MWD) is entitled to half, 50%, of whatever the DWR can make available through the SWP. That is the proportional share for MWD. Historically, MWD has not ever taken its full share. This has drastically changed with the recently Federal mandated cut back to MWD's Colorado River water. The Report alludes to this on page 6 but does not appear to have calculated this into the figures in the simulations and models. With MWD taking its full share of available supply, all the other South of the Delta contractors (26 of the 29) will be getting a quantifiably lesser amount of water. This Report should include this scenario.

-The Report ignores the effect of the Appellate ruling in *PCL v. DWR*. The Report is not based on the pre-Monterey (1995) SWP contracts and as a result the Report contains inaccurate reliability numbers.

The September 15, 2000 decision by the 3<sup>rd</sup> District Court of appeal in *PCL v DWR*, set aside the Environmental Impact Report (EIR) for the Monterey Amendments to the SWP and required DWR to complete a new EIR. The new EIR has not been completed at this time and there is no certainty as to what the new amendments coming from this EIR will cover. DWR is currently in settlement negotiations with the plaintiffs over the September 15, 2000 decision by the 3<sup>rd</sup> District Court of Appeal.

### **Effect of the Monterey Amendments and Articles 18(a) and 18(b)**

Because of the 3<sup>rd</sup> District Court of Appeal decision on September 15, 2000 in *PCL v DWR*, DWR must prepare a new EIR for the so called Monterey Amendments to the SWP contracts. Implicit in this new EIR will be the analysis of the pre-Monterey SWP contracts; **especially a thorough analysis of Article 18(a) and Article 18(b) as they relate to SWP reliability.** The analysis of Articles 18(a) & 18(b) must be a part of this Reliability Report as there is presently no final EIR for the proposed Monterey Amendment changes to the existing contracts. Nowhere in the existing Reliability Report is there any reference to the analysis of Articles 18(a) & (b) as being part of the background for this Report. This is a fatal oversight.



### **-The Report and the Media-**

Local agencies and planners have been confused and misled by The Report. Unfortunately, the reliability numbers in this Report have already been used by the media and by the Lake Castaic Water Agency to say that there is plenty of water for the Newhall Ranch development of 22,000 new homes. The Agency based this assumption on this draft DWR Reliability Report that says the SWP is 70%- 75% reliable. On October 10, the Daily News of Santa Clarita staff writer, Kathleen Sweeney, reported, "By using a computer model and 73 years of data, the state concluded that the State Water Project, using existing facilities and operated under current regulations, can deliver 70 percent to 75 percent of the primary contractual supply now and in the future, the report said." This is considerably more than the SWP has EVER delivered on a reliable basis in its entire existence.

Another instance of this Report being used in a misleading way occurred on October 7<sup>th</sup> at the Public Hearing held by DWR in Santa Barbara. Robert Almy, head of the Santa Barbara Water Agency, stated that SWP water was 76% reliable for development in Santa Barbara. He did this after Katherine Kelly from DWR explained that the percentage reliability figures were contingent on whether a contractor could take all the water when it was offered by DWR and store it in local facilities. There is NO such local storage available for Santa Barbara.

In addition to requesting clarification and modification of The Report as outlined above, we would like to have the following questions addressed:

#### **Additional Questions:**

There is some discussion about Article 21 water (see p. 8 & 11); the so called "surplus" water. Please answer the following questions regarding Article 21 water:

1. What determines when Article 21 water is available, over and above the 4 conditions listed on page 11?
2. How many times (please give specific dates) has there been Article 21 water actually not taken?
3. What are the historic actual deliveries of Article 21 water from 1977-2001?
4. How does the Environmental Water Account affect Article 21 water?
5. If Article 21 water were stored in the Kern Fan Element (owned by DWR pre Monterey Amendments), would this, in fact, increase the SWP overall reliability to all South of the Delta contractors (26 of the 29 contractors)?

Some further questions:

1. How does the 1994 Bay Delta Accord Agreement (where 800,000 AF of water is to be withdrawn from the SWP and CVP [combined] for the environment in times of drought) affect the reliability of SWP water?
2. If DWR is not accurate and contractors base Urban Water Management Plans and other plans on faulty information, is DWR liable? Who is accountable for accurate information?

3. How are SWP, CVP water and local Kern River water separated at the Delta for accounting purposes?
4. How does the simulation model track water? Does the water tracked include groundwater as well as surface water? How is the groundwater measured?
5. Where does the water for the SWP originate?. What are all the sources of water used in the simulation and models for this Report?

We would like to formally request that these comments and questions, along with all others submitted, and the responses by DWR, become a formal part of the SWP Delivery Reliability Report as an appendix. Given that so much potential development depends on this Report, the public and planners need to see what the public's concerns are and how DWR addresses these concerns. These comments are submitted on behalf of the Citizens Planning Association of Santa Barbara County.

*Carolee K. Krieger*

Respectfully submitted by: Carolee K. Krieger  
Citizens Planning Association  
916 Anacapa Street  
Santa Barbara, CA 93101  
Ph: (805) 966-3979 or (805) 969-0824  
Email: [caroleekrieger@cox.net](mailto:caroleekrieger@cox.net)